

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

BANK OF OKLAHOMA, N.A.,)	
)	
Plaintiff,)	
)	
vs.)	No. CIV-06-516-JHP
)	
(1) JAMES B. SMITH,)	
(2) BRETT B. SMITH,)	
(3) ELIZABETH SUE SMITH,)	
(4) WATT'S OIL CO., INC.,)	
(5) WATT'S PROPANE AND OIL)	
SERVICES, INC.,)	
(6) RURAL ENTERPRISES OF)	
OKLAHOMA, INC.,)	
(7) UNITED STATES SMALL BUSINESS)	
ADMINISTRATION,)	
(8) TEAM PETROLEUM, INC.,)	
(9) LARRY ALEXANDER, D/B/A)	
ALEXANDER'S REFRIGERATION,)	
(10) TOWN & COUNTRY LEASING, LLC,)	
(11) VISION FINANCIAL GROUP, LLC.,)	
(12) BANK OF THE WEST,)	
(13) CN FUNDINGS, LLC,)	
(14) PUGET SOUND LEASING, INC., and)	
(15) GOLD GROUP, LLC,)	
)	
Defendants.)	

JOURNAL ENTRY

Now on this 25th day of August, 2011 the above entitled cause comes on for hearing before the Honorable James H. Payne, United States District Judge, Eastern District of Oklahoma, presiding, and the issues having been heard judgment is rendered in the above-styled and numbered cause as follows:

[1] On September 29, 2006, Plaintiff Bank of Oklahoma, N.A. (hereafter BOK) filed a Petition on Note and to Foreclose Mortgage on Real Property in the Pittsburg County District Court as Case No. C-06-941.

[2] On November 28, 2006, Notice of Removal of Action [Doc. 2] was filed by Defendant United States Small Business Administration, transferring this case to the United States District Court, Eastern District of Oklahoma. Defendant/Counter Plaintiff United States Small Business Administration (hereinafter SBA). On December 1, 2006, SBA filed its Counter Claim and Cross Claim against Plaintiff/Counter-Defendant BOK [Doc. 6].

[3] On February 15, 2007, Defendant James B. Smith (1), filed petition for relief under Chapter 7 in U.S. Bankruptcy Court, Eastern District of Oklahoma. [Doc. 27]. On September 11, 2007, bankruptcy court granted discharges of all pre-bankruptcy debts pursuant to §727 of the Bankruptcy Code. By operation of § 362(c)(2)(C) of the Bankruptcy Code, the automatic stay terminated upon entry of the discharge orders. As a result, creditors of Defendant James B. Smith are permanently enjoined from commencing or continuing any action to collect a debt, as the **personal** liability of Defendant James B. Smith, that was discharged in his bankruptcy case.

[4] On April 28, 2008, BOK filed its Motion for Default Judgment [Doc 39] against certain of the defendants in this action. By its Order for Default Judgment entered on April 28, 2008, the Court granted default judgment in favor of BOK against the following Defendants (Doc 40): **(10)** Town & Country Leasing, LLC, **(11)** Vision Financial Group, LLC, **(12)** Bank of the West, **(13)** CN Fundings, LLC, **(14)** Pugent Sound Leasing Company, Inc., and (15) Gold Group, LLC. [Doc. 40]

[5] On September 3, 2008, BOK and SBA filed a Joint Motion for Partial Summary Judgment against James B. Smith, Brett B. Smith and Watt's Oil, Inc. [Doc. 41 and 42] Said motion was granted by the Court on January 23, 2009.

In that Order, the Court ordered that the subject real property be sold with appraisal, subject to unpaid taxes, with the proceeds applied in the following order: 1.) Payment of all costs and expenses of foreclosure. 2.) In partial satisfaction of BOK's line, payment to BOK of \$246,676.61 (which is \$215,250.00 in principal, \$26,192.43 in accrued interest to February 20, 2008), plus all like utilities until the sale of the Real Property is confirmed, plus interest from February 20, 2008 at the non-default rate of 6.64% per annum, which is \$39.05 per diem, until BOK is paid in full. 3.) Payment of the surplus, if any, into Court pending further orders and/or judgment.

In that Order, the Court also ruled that BOK and the United States of America had priority mortgages. In addition to costs, the total sum due to BOK was \$527,094.90, plus interest from February 20, 2008 at the rate of 18% per annum and the sum of \$229,390.15, plus additional interest accruing after July 8, 2008, due to Defendant United States of America. [Doc. 51]

[6] BOK also asserted an *in rem* claim against Defendant Elizabeth Sue Smith (3) based on her granting of a first priority construction mortgage on the Real Property to secure repayment of the promissory note.

[7] BOK asserted an *in personam* claim against (4)Watt's Oil Company, Inc., based on its guaranty of the indebtedness of James Smith and Brett Smith under the promissory note. These entities are the subject of a receivership action entitled *Team Petroleum, Inc. v. (4) Watt's Oil Company, Inc., (5) Watt's Propane and Oil Services, Inc., Watt's Fuel and Oil Services and James B. Smith*, Case No. CJ-04-775, in District Court in and for Pittsburg County, State of Oklahoma ("Receivership"). The case remains open but, upon information and belief, all or almost all of the assets of these entities have been liquidated and distributed to creditors.

[8] The following parties remain in this case, but the Order granting the partial summary judgment effectively establishes their priority as secondary to that of BOK and the United States with respect to the Real Property. To the extent any equity in the Real Property remains after payment to BOK and the United States on their first priority secured claims, the sale proceeds representing the legal interest of James Smith must be returned to his Chapter 7 bankruptcy estate pursuant to the BOK Stay Order, while the funds representing the legal interest of Elizabeth Sue Smith must be paid into this Court's registry and will be available for the satisfaction of these parties' liens. Based on the amount of BOK's and the United States' first priority secured claims and the value of the underlying Real Property collateral, it appears that there will not be any sales proceeds available to satisfy these parties' claims, in whole or in part, and such parties are unsecured creditors.

(8) Team Petroleum, Inc. claims an interest in the Real estate by virtue of a judgment rendered on June 14, 2006, in the Receivership, and recorded on June 14, 2006, in book 1453 and page number 473 of the records of the County Clerk of Pittsburg County, Oklahoma.

(9) Defendant, Larry Alexander, d/b/a Alexander's Refrigeration, claims an interest in the Real Estate by virtue of a mechanic's/materialman's lien recorded on June 6, 2006, in book 1451 and page number 66 of the records of the County Clerk of Pittsburg County, Oklahoma.

Sinclair Oil Corporation claimed an interest in the Real Property by virtue of a judgment lien recorded in the Pittsburg County Clerk land records on November 30, 2006 in Book 1487 at page 751. Sinclair Oil Corporation's Application to Intervene filed in this case on July 9, 2007. [Doc. 30] Sinclair Oil Corporation's Application was terminated on July 23, 2007. [Doc. 32]

[9] On February 10, 2010, the Court entered its Order granting the Joint Motion of BOK and SBA Motion Authorizing Private Sale of Real Property. [Doc. 57]

[10] On January 6, 2011, Magistrate Judge Kimberly West entered an Order Confirming Marshal's Sale to the highest bidder, Gary Boyd. [Doc 95] The Order disbursed the funds as follows:

FIRST: To the unpaid costs and expenses of foreclosure in the amount of	\$ <u>5,148.04</u>
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To the U.S. Marshal Service for the balance of fees & mileage	\$ 33.04
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US Marshal Service Commission	\$ 5,115.00
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SECOND: To the partial satisfaction of BOK's lien, payment to BOK of	<u>\$303,428.36</u>
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Unpaid principal	\$215,250.00
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Accrued interest to February 20, 2008	\$ 26,192.43
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Utilities to maintain the Real Property through January 28, 2008	\$ 5,234.18
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Accrued interest from February 20, 2008 to date sale is confirmed at the non-default rate of 6.64% per annum, which is \$39.05 per diem	\$ 32,567.70
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Utilities to maintain the Real Property from January 29, 2008 to date sale is confirmed	\$ 11,010.55
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Property Taxes Paid	\$ 12,270.50
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Expenses incurred in sale of property paid to US Marshal	\$ 903.00
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THIRD: The surplus into Court pending further orders and/or judgment.

[11] On January 10, 2011, the U.S. Marshall's office filed a receipt of \$31,423.60 as a surplus after the sale. [Doc. 96]

[12] On February 16, 2011, SBA filed a motion for disbursement of the remaining funds of \$31,423.60. [Doc. 102]. On March 8, 2011, the Court entered an Order of Distribution awarding SBA \$23,567.70 and BOK \$7,855.90 from remaining funds of \$31,423.60. [Doc. 103]

[13] On August 11, 2011, Plaintiff BOK filed an Application to Supplement the Notice of Removal [Doc. 105]. Said application was granted [Doc. 106] and the Answers of (1) James B. Smith, (2) Brett B. Smith, (3) Elizabeth Sue Smith, (4) Watts Oil Co. Inc, Watts Oil, (5) Propane Services, Inc., and (8) Team Petroleum were added to the record. Each Defendant was also represented in this matter and provided with Notice of all hearings, filings and any and all court action. No one appeared for these Defendants at the Court's August 10, 2011 hearing.

[14] On August 18, 2011, Plaintiff BOK filed its Motion for Default Judgment [Doc 112] against certain of the defendants in this action. By its Order for Default Judgment entered on August 19, 2011, the Court granted default judgment in favor of BOK against Defendants (6) Rural Enterprises of Oklahoma, Inc., and (9) Larry Alexander, d/b/a Alexander's Refrigeration

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the said sale, all defendants, and each of them, and all persons or entities claiming by, through or under the defendants, or any of them, are hereby forever barred and foreclosed of and from any and all right, title or interest, estate or equity of redemption in and to the real property described on Exhibit A attached hereto, and any improvements located thereon, or any part thereof.


James H. Payne
United States District Judge
Eastern District of Oklahoma

BOK v. SMITH, et al., No. CIV-06-516-KEW, USDC, E.D. of Oklahoma
Signature Page to be attached to Journal Entry of Judgment

Approved as to Form and Content:

/s/ Sean M. McKelvey
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BOK v. SMITH, et al., No. CIV-06-516-KEW, **USDC, E.D. of Oklahoma**
Signature Page to be attached to Journal Entry of Judgment

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